



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201227009

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

Uniform Issue List: 408.03-00

APR 11 2012

XXX  
XXX  
XXX

T'EP'RA: RA: T2

Legend:

Taxpayer A           XXX

Taxpayer B           XXX

Financial  
Institution A       XXX

Financial  
Institution B       XXX

IRA P.               XXX

IRA Q               XXX

IRA X               XXX

IRA Y               XXX

Amount 1           XXX

Amount 2           XXX

Date 1               XXX

Date 2               XXX

Date 3                   XXX

Date 4                   XXX

Dear XXX:

This letter is in response to your request dated July 19, 2011, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code"). Correspondence on December 23, 2011, and January 16, 2012, supplemented the request.

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 70, represents that on Date 1 he received a distribution from IRA P totaling Amount 1. Taxpayer B, age 70, represents that on Date 1, she received a distribution from IRA Q totaling Amount 2. Taxpayers A and B assert that their failure to accomplish rollovers of Amounts 1 and 2 within the 60-day period prescribed by section 408(d)(3) of the Code was due to financial institution error. Taxpayers A and B also represent that Amounts 1 and 2 have not been used for any other purpose.

Taxpayer A represents that on Date 1 he took a distribution of Amount 1 from IRA P in the form of a distribution check paid to the order of Financial Institution 2 for the benefit of Taxpayer A. Taxpayer A asserts that he intended to deposit the distribution check into IRA X at Financial Institution B. Similarly, Taxpayer B represents that on Date 1 she took a distribution of Amount 2 from IRA Q in the form of a distribution check paid to the order of Financial Institution 2 for the benefit of Taxpayer B. Taxpayer B asserts that she intended to deposit her distribution check into IRA Y at Financial Institution B. Taxpayer B spoke to a representative of Financial Institution B on the phone and obtained the mailing address for deposit of IRA rollovers into their existing IRA accounts, IRA X and IRA Y, at Financial Institution B. On Date 2, Taxpayers A and B mailed their distribution checks to Financial Institution B. The United States Postal Service returned the checks to Taxpayers A and B on Date 3, after the expiration of the 60-day rollover period.

Upon discovery that the distribution checks had not been deposited into IRA X and IRA Y at Financial Institution B, Taxpayer A and Taxpayer B made arrangements to do so. On Date 4, Taxpayer A deposited his distribution check into IRA X at Financial Institution B. Also on Date 4, Taxpayer B deposited her distribution check into IRA Y at Financial Institution B.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA P and Amount 2 from IRA Q.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if--

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under section 408(d)(3)(A) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayers A and B is consistent with their assertions that they timely mailed Amounts 1 and 2 to effect a rollover, which resulted in the distribution checks for Amount 1 and Amount 2 being returned to Taxpayers A and B after the 60-day rollover period.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 1 from IRA P and the distribution of Amount 2 from IRA Q. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contributions, Amount 1 and Amount 2, which were deposited into IRA X and IRA Y respectively, will be considered rollover contributions within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, contact XXX XXX at (XXX) XXX-XXXX. Please address all correspondence to SE:T:EP:RA:T2.

Sincerely yours,



Donzell Littlejohn, Manager,  
Employee Plans Technical Group 2

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: XXX  
XXX  
XXX  
XXX